



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0524; FRL-8762-01-R4]

Air Plan Approval; South Carolina; 2018 General Assembly New Source Review Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC or Department), on April 24, 2020. The SIP revisions update the State's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations. Specifically, the SIP revisions add and update several definitions for consistency with the Federal regulations, update public participation requirements for PSD, clarify the applicability of "source impact analysis" for PSD, add an emissions offset banking provision for NNSR, and make administrative updates, such as typographical corrections and renumbering. Finally, the changes incorporate language that addresses the public notice rule provisions for NNSR, which removes the mandatory requirements to provide public notice in a newspaper and instead allows for electronic notice ("e-notice") as an alternate noticing option for the State. EPA is proposing to approve these revisions pursuant to the Clean Air Act (CAA or Act) and implementing Federal regulations.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0524 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include a discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is EPA Proposing?

On April 24, 2020, SDHEC submitted SIP revisions to EPA for approval that include changes to South Carolina's major source New Source Review (NSR) permitting regulations to make them more closely align with Federal requirements for PSD and NNSR permitting; correct typographical errors; and update internal references, including renumbering throughout both regulations. Specifically, these changes update South Carolina Regulation 61-62.5, Standard No. 7 – *Prevention of Significant Deterioration* and Standard No. 7.1 – *Nonattainment New Source*

Review.¹ In addition to the changes above, the SIP revisions include an update to the public noticing procedures for South Carolina’s NNSR regulations. The public notice requirement updates address the Federal rule entitled “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs,” (also referred to as the e-Notice Rule) that was finalized in 2016. *See* 81 FR 71613 (October 18, 2016).²

With certain exceptions described in Section III below, EPA is proposing to approve the changes submitted by South Carolina on April 24, 2020, which modify the State’s PSD and NNSR programs, as meeting the requirements of the Federal NSR program and being consistent with the CAA.

II. Background

This proposed action seeks to revise South Carolina’s PSD and NNSR regulations in the federally-approved SIP. Many of these changes are administrative in nature, including updating internal references and correcting typographical errors, but they do include the adoption of several definitions currently in the Federal NSR regulations, update public participation requirements for PSD, clarify the applicability of “source impact analysis” for PSD, and add an emissions offset banking provision for NNSR, which will be discussed in further detail in Section III below. Additionally, the April 24, 2020, SIP revisions also adopt e-notice provisions into the State’s NNSR regulations.

On October 5, 2016, EPA finalized the revised public notice rule provisions for the Federal NSR, Title V, and the Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). The new provisions removed the mandatory requirement to

¹ On April 24, 2020, SDHEC also submitted to EPA SIP revisions to Regulations 61-62.1, Section I – *Definitions*; 61-62.1, Section II – *Permit Requirements*; 61-62.1, Section III – *Emission Inventory and Emissions Statement*; 61-62.1, Section IV – *Source Tests*; 61-62.1, Section V – *Credible Emissions*; 61-62.5, Standard No. 2 – *Ambient Air Quality Standards*; and 61-62.5, Standard 5.2 – *Control of Oxides of Nitrogen (NOx)*. EPA will address these SIP revisions in separate actions.

² EPA previously approved e-notice provisions for South Carolina’s PSD program. *See* 83 FR 64285 (December 14, 2018). Although the e-notice provisions in the State’s NNSR program are being proposed for incorporation into the SIP for the first time, the April 24, 2020, SIP revisions also include updates to the already SIP-approved e-notice provisions in South Carolina’s SIP-approved PSD program.

provide public notice of a draft air permit through publication in a local newspaper. Instead, these provisions allow for an internet-based “e-notice” option for permitting authorities implementing their own SIP-approved permitting programs and EPA-approved Title V programs. However, permitting authorities are not required to adopt e-notice. Nothing in the final rule prevents a permitting authority from continuing to use newspaper notification and/or from supplementing an e-notice with newspaper notifications and/or additional means of notification. When e-notice is provided, EPA’s rule requires electronic access (e-access) to the draft permit. Generally, state and local agencies intend to post the draft permits and public notices in a designated location on their agency websites, which is accessible to anyone in the general public. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule simply requires the permitting authority to use “a consistent noticing method” for all permit notices under the specific permitting program.

E-notice is already being practiced by many permitting authorities, including South Carolina in their PSD program, because it enables them to communicate permitting and other affected actions to the public more quickly and efficiently while lowering costs by eliminating or minimizing newspaper publications. A full description of the Federal e-notice provisions is available in EPA’s October 18, 2016 final rulemaking notice. *See* 81 FR 71613.

III. Analysis of State’s Submittal

As mentioned above, the April 24, 2020, SIP revisions include changes to South Carolina’s PSD and NNSR regulations. Many of these changes are administrative in nature, including updating internal references, correcting typographical errors, and renumbering paragraphs. However, the SIP revisions do include several changes intended to make South Carolina’s major source NSR regulations more closely align with the Federal major source NSR regulations, including the adoption of several definitions, and updating of other definitions, that are currently in the Federal NSR regulations. Included below in Sections III.A. and III.B. are more details on the key updates proposed for adoption into the South Carolina SIP.

A. *Regulation 61-62.5, Standard No. 7 – Prevention of Significant Deterioration*

The April 24, 2020, SIP revisions include the following key changes within the State's current SIP-approved PSD regulations in order to more closely align with the Federal PSD regulations: 1) Updating the definition of "Building, structure, facility or installation;" 2) Deleting the mention of fugitive emissions from the definition of "Major modification" and "Net emissions increase;" 3) Adding a definition for "Pollution prevention;" 4) Updating the "Exceptions" section to clarify the applicability of the "Source Impact Analysis" section of the PSD regulations in regards to the 2015 8-hour ozone national ambient air quality standards (NAAQS); 5) Updating the definition of "Monitoring, recordkeeping and reporting;" and 6) Updating the public participation requirements for PSD, including those for plantwide applicability limits (PALs) permits under PSD. More details are included below.

Under Section (B), *Definitions*, the definition of "Building, structure, facility or installation" was updated by renumbering the paragraph from (b)(9) to (B)(9)(a) and adding paragraph (B)(9)(b) to expand the definition and give more details on the applicability for onshore activities related to Oil and Gas Extraction. These changes more closely align the rule with the Federal PSD regulation at 40 CFR 51.166(b)(6)(ii), and EPA is proposing to approve them into the South Carolina SIP.

Originally found in paragraphs (b)(30)(v) and (b)(34)(iii)(d), South Carolina's PSD regulations contained a description of fugitive emissions under the definitions of "Major modification" and "Net emissions increase." In the April 24, 2020, SIP revisions, these two paragraphs are renumbered to (B)(30)(e) and (B)(34)(c)(ii), respectively, and the text is removed and replaced with "[Reserved]". The Federal PSD regulation, specifically at 40 CFR 51.166(b)(2)(v) and (b)(3)(iii)(d), contains the language regarding fugitive emissions that South Carolina seeks to remove from its SIP; however, this language in the Federal rules has been

stayed indefinitely.³ EPA never acted on the language found in South Carolina's former paragraphs (b)(30)(v) and (b)(34)(iii)(d), because the State withdrew its request to adopt it into the SIP through a December 20, 2016, withdrawal letter.⁴ Because the language was never approved into the SIP and the language in the Federal PSD regulations is currently stayed, EPA is proposing to add paragraphs (B)(30)(e) and (B)(34)(c)(ii) to the South Carolina SIP as submitted in the April 24, 2020, submittal with the "[Reserved]" note in them.

Also, under the *Definitions* section, under paragraph (B)(36), the State originally had a "[Reserved]" note. In the April 24, 2020, SIP revisions, the State deletes the note and adding a definition of "Pollution prevention" in its place. This definition mirrors that of the Federal PSD regulation, found at 40 CFR 51.166(b)(38), and EPA is proposing to approve it into the South Carolina SIP.

Under Section (I), *Exemptions*, the State added new paragraphs at (I)(11)(a) and (b), which are meant to clarify the applicability of Section (K), *Source impact analysis*. The new paragraphs were added to clarify which permit applications must comply with Section (K) with respect to the 2015 8-hour ozone NAAQS. Specifically, these new paragraphs explain that if a permit application was determined by the State to be complete on or before October 1, 2015, the ozone NAAQS with respect to which the requirements of Section (K) apply is the ozone NAAQS in effect on the date the permit application was determined to be complete and not the 2015 ozone NAAQS. These new paragraphs also explain that if the State had published a public notice with a preliminary determination regarding the application before December 28, 2015, the ozone NAAQS with respect to which the requirements of (K) apply is the ozone NAAQS in effect at the time of first publication of the public notice of a preliminary determination on the

³ Effective September 30, 2009 (74 FR 50115), EPA established a three-month stay of what is commonly known as the Fugitive Emissions Rule. The stay was later extended for an additional three months, effective December 31, 2009 (74 FR 65692). In order to allow for more time for the reconsideration and for public comment on any potential revisions to the Fugitive Emissions Rule, EPA established a longer 18-month stay that became effective on March 31, 2010 (75 FR 16012). Finally, on March 30, 2011, EPA stayed indefinitely portions of the Fugitive Emissions Rule.

⁴ The December 20, 2016, withdrawal letter can be found in the docket for this proposed rulemaking.

permit application or public notice of the draft permit and not the 2015 ozone NAAQS. The final rule promulgating the 2015 8-hour ozone NAAQS was signed by the EPA Administrator on October 1, 2015, and became effective on December 28, 2015. *See* 80 FR 65292 (October 26, 2015). Given these dates, South Carolina's October 1, 2015, and December 28, 2015, deadlines in paragraphs (I)(a) and (I)(b), respectively, would be appropriate cutoff dates for the applicability of Section (K) in regard to the 2015 ozone NAAQS. Additionally, these changes more closely align the rule with the Federal PSD regulation at 40 CFR 51.166(i)(11)(i) and (ii). EPA is therefore proposing to approve these changes into the South Carolina SIP.

Under Section (R), *Source obligations*, South Carolina updated the definition of "Monitoring, recordkeeping and reporting" found in paragraph (R)(6) by adding paragraphs (R)(6)(c), and (R)(6)(g)(i) and (ii). Paragraph (R)(6)(c) adds an additional requirements for emissions units that are existing electric utility steam generating units, and Paragraph (R)(6)(g) adds the definition of "reasonable possibility" as that term is used in Paragraph (R)(6). These changes match the Federal PSD regulations at 40 CFR 51.166(r)(6)(ii) and (r)(6)(vi), respectively, and EPA is proposing to approve these changes into the South Carolina SIP.

Finally, under Section (Q), *Public Participation*, South Carolina updates the e-notice provisions for PSD. Originally found in paragraph (q)(2)(ii), the public notice requirements are renumbered to (Q)(2)(c) and reworded for clarity and consistency with the Federal e-notice rule. The updates identify website publication on a public website selected by the Department as the consistent noticing method for draft permits subject to public notice under its PSD program. The updates note that other methods, such as newspapers, may be used in addition to website publication. South Carolina also includes a cross reference to the new e-notice provisions of Section (Q) under the State's PALs provisions for PSD to maintain the consistent e-noticing method of public participation throughout its PSD regulations. The updated language can be found under Section (AA) of Standard No. 7, in paragraph (AA)(5). EPA is proposing to

approve these changes into the South Carolina SIP because they are consistent with EPA's e-notice rule.

All other changes to Standard No. 7 included in the April 24, 2020, SIP revisions are administrative in nature and are being proposed for approval into the South Carolina SIP.⁵

B. Regulation 61-62.5, Standard No. 7.1 – Nonattainment New Source Review

The April 24, 2020, SIP revisions include the following key changes within the State's current SIP-approved NNSR regulations to more closely align with the Federal NNSR regulations: 1) Adding multiple definitions included in the Federal NNSR regulations; 2) Updating and renumbering existing definitions in South Carolina's SIP; 3) Adopting language regarding interpollutant trading and banking; and 4) Updating the "Public participation" requirements for NNSR, including those for PALs permits under NNSR.

Under Section (A), *Applicability*, South Carolina renumbered former paragraph (e) to paragraph (A)(10). Although most of paragraph (A)(10) is appropriate for incorporation into the South Carolina SIP and matches the current Federal rule, former paragraph (e) had a portion of the definition for "Chemical process plants," previously found at paragraph (e)(T), that was never approved in the SIP. In particular, the language contained after "Chemical process plant," now renumbered to paragraph (A)(10)(t), which states that "The term chemical processing plants shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140," is not currently in the SIP and cannot be incorporated due to issues with the 2007 Federal Ethanol Rule.⁶ Due to the ongoing review of

⁵ A description of each of these changes to Standard No. 7 begins on page 354/500 of the April 24, 2020, submittal PDF. The submittal can be found in the docket for this proposed rulemaking.

⁶ On May 1, 2007, EPA published in the *Federal Register* the 2007 Ethanol Rule (72 FR 24060), which amended EPA's PSD and NNSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the "chemical process plants" category under the regulatory definition of "major stationary source." Shortly thereafter, EPA received a petition for reconsideration of the 2007 Ethanol Rule provisions from Natural Resources Defense Council (NRDC), which petition EPA initially denied on March 27, 2008. See 73 FR 24174 (March 27, 2008). In 2009, EPA received a second petition for reconsideration from NRDC, and NRDC also filed a petition for judicial review in the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA's 2008 denial of its first petition for reconsideration. The court granted a joint motion to hold the case in abeyance, and the case has remained in abeyance. On October 21, 2019, EPA partially granted and partially denied the second petition for reconsideration. See 84 FR 59743 (November 6, 2019). Specifically, EPA

the 2007 Ethanol Rule in regards to the Federal NNSR regulations, South Carolina withdrew its request for EPA to approve the phrase “The term chemical processing plants shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140” in the renumbered paragraph (A)(10) through a letter dated June 21, 2021.^{7, 8}

Under Section (B), *Definitions*, the State adds several definitions that are part of the Federal NNSR regulations. The new definitions include: Allowable emissions; Begin actual construction; Building, structure, facility, or installation; Temporary clean coal technology demonstration project; Clean coal technology; Clean coal technology demonstration project; Commence; Construction; Continuous emissions monitoring system; Continuous emissions rate monitoring system; Continuous parameter monitoring system; Electric utility steam generating unit; Emissions unit; Federal Land Manager; Federally enforceable; Fugitive emissions; Necessary preconstruction approvals or permits; Pollution prevention; Potential to emit; Predictive emissions monitoring system; Project; Replacement unit; Resource recovery facility; Reviewing authority; Secondary emissions; and Stationary source. Except for the definition for “Resource recovery facility,” the new definitions all match those in the Federal NNSR regulation found at 40 CFR 51.165, and EPA is proposing to approve them into the South Carolina SIP.⁹

granted the request for reconsideration with regard to the claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 anti-backsliding requirements for nonattainment areas. Concurrently, EPA denied the remainder of the requests for reconsideration. This means that states are now able to adopt the Ethanol Rule provisions for their PSD programs, but are generally not choosing to do the same for their NNSR programs at this time.

⁷ The June 21, 2021, withdrawal letter can be found in the docket for this proposed rulemaking.

⁸ Former paragraph (c)(7)(C)(xx) contains the same ethanol exclusion language as (A)(10)(t). South Carolina renumbered this paragraph to (B)(22)(c)(xx). The June 21, 2021, withdrawal letter also withdraws South Carolina’s request for EPA to incorporate the ethanol exclusion language at (B)(22)(c)(xx) into the South Carolina SIP.

⁹ At the time of submission, the definitions for “Replacement unit” and “Secondary emissions” in South Carolina’s April 24, 2020, SIP revisions matched the then-current Federal NNSR regulations. On June 22, 2021, the EPA Administrator signed a final rule amending several NSR regulations, including the definitions for “Replacement unit” and “Secondary emissions.” This final rule is available at <https://www.epa.gov/nsr/final-error-corrections-rule>. Although the definitions of these two terms in South Carolina’s submittal do not exactly match the revised Federal definitions, EPA is proposing to approve them into the South Carolina SIP given the nature of the revisions to these Federal definitions. However, if South Carolina wishes to have matching definitions, it may submit a SIP revision in the future to adopt the revised definitions into its SIP.

The new definition for “Resource recovery facility,” found in paragraph (B)(34) of South Carolina’s Standard No. 7.1 in the SIP revision, does not match the Federal NNSR regulations because the Federal rules do not contain a definition for this kind of facility. However, the new definition merely clarifies what constitutes a resource recovery facility and does not create a new exemption or limitation on the applicability of the State’s NNSR regulations. Therefore, EPA is proposing to approve the definition into the South Carolina SIP.

Also, under Section (B), South Carolina’s April 24, 2020, SIP revisions update and replace two lists, converting them into a table format. Specifically, the changes involve paragraph (B)(22)(a), formerly found in paragraph (c)(7)(A), and paragraph (B)(37), formerly found in paragraph (c)(14).

Former paragraph (c)(7)(A), which contained the definition of “Major stationary source,” used to include a list of emissions thresholds for sources in certain nonattainment areas under paragraphs (c)(7)(A)(i)(a) through (d). These thresholds are now recodified in the table found in paragraph (B)(22)(a)(i) and are expanded for clarity. The threshold values and list of pollutants are unchanged from the SIP-approved version of the rule. Although the revision does not add ammonia as a precursor to fine particulate matter (PM_{2.5}),¹⁰ EPA does not believe that this will have any negative impact on the attainment or maintenance of the PM_{2.5} NAAQS in the State. This is due to the fact that South Carolina does not currently have any PM_{2.5} nonattainment areas, and thus, the PM_{2.5} thresholds in this NNSR rule are not currently applicable. In the event of an area being designated nonattainment for PM_{2.5} in the future, the State would be required to submit, among other things, a revised NNSR SIP revision that identifies ammonia as a PM_{2.5} precursor. For these reasons, EPA believes that the recodified table in paragraph (B)(22)(a)(i) is appropriate for approval into the South Carolina SIP.

¹⁰ The Federal NNSR definition of “Major stationary source” sets a 70 tpy major source threshold for the PM_{2.5} precursors (Sulfur dioxide, Nitrogen oxides, Volatile Organic Compounds, and Ammonia) in any serious PM_{2.5} nonattainment area. See 40 CFR 51.165(a)(1)(iv)(A)(I)(viii) and (a)(1)(xxxvii)(C)(2).

Former paragraph (c)(14) contained a definition of “Significant” and included a list of emission rates at or above which a net emissions increase or the potential to emit from a source would be considered significant. South Carolina renumbered the definition as paragraph (B)(37) and created a table containing the significant emissions rates. The rates in the new table generally match the rates in former paragraph (c)(14), except for the rates for carbon monoxide (CO) and ozone, which are expanded to include more stringent rates. For CO, South Carolina’s April 24, 2020, SIP revisions maintain the old emissions rate, now only applicable in marginal and moderate nonattainment areas, but add a more stringent emissions rate for serious nonattainment areas. Similarly, for ozone, South Carolina maintains the old emissions rate, now applicable only for marginal and moderate nonattainment areas, but adds more stringent rates for serious and severe nonattainment areas, as well as for extreme nonattainment areas. Given that these changes are more stringent than the current SIP-approved rule, EPA believes that they are appropriate for incorporation into the South Carolina SIP.

Under Section (C), which incorporates parts of former paragraph (d) - *Permit requirements*, South Carolina’s April 24, 2020, SIP revisions add additional conditions regarding emissions offsets and alternative site analysis that need to be met in order to grant a permit; adds exemptions for “Temporary emission source” and “Secondary emissions;” and clarifies the requirements of the State’s NNSR regulations, in regards to major sources and major modifications of PM₁₀.

As part of the changes to Section (C), South Carolina includes two new paragraphs, (C)(1)(d) and (e). Paragraph (C)(1)(d) adds as a condition for a permit approval, for the source to obtain a positive net air quality benefit in the affected area, as determined by 40 CFR part 51, Appendix S. Paragraph (C)(1)(e) adds a condition for the source to carry out an alternative sites analysis in order to demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Under new paragraphs (C)(2) and (C)(3), South Carolina adds new exemptions for “Temporary emissions source[s]” and “Secondary emissions.” The exemption for “Temporary emissions source” does not exempt temporary sources, defined by the State as plants or facilities that will be relocated outside the nonattainment area after a short period of time, from obtaining a permit. This change exempts these types of sources from meeting the requirements of paragraphs (C)(1)(c) and (C)(1)(d), which require that the source obtain emissions reductions from other sources to offset the increase in emissions. The exemption for “Secondary emissions” states that if a source is subject to the NNSR regulation due to direct emissions from the source, the applicable conditions in paragraph (C)(1) must also be met for secondary emissions; however, secondary emissions may be exempt from paragraphs (C)(1)(a) (lowest achievable emissions rate) and (C)(1)(b) (compliance certification). EPA is proposing to approve the addition of paragraphs (C)(2) and (C)(3) because they are consistent with the exemptions in Appendix S of 40 CFR Part 51 and still require preconstruction review for temporary sources and sources subject to NNSR regulation due to direct emissions.¹¹

Finally, the changes to Section (C) include a clarification paragraph in regards to particulate matter (PM₁₀). In particular, paragraph (C)(4) explains that the requirements of the State’s NNSR regulations, in regards to major sources and major modifications of PM₁₀, would also apply to major sources and major modifications of PM₁₀ precursors.

Under new Section (D), *Offset standards*, South Carolina incorporates several paragraphs that were previously parts of former paragraph (d) of the State’s NNSR regulations. The SIP revisions also adds new paragraphs throughout this section for consistency with the Federal offset provisions found at 40 CFR 51.165(a)(3). New paragraphs (D)(4), (5), (7), and (8) are consistent with federal requirements found in 40 CFR 51.165(a)(3)(ii)(C), (G), and (J), all relating to the baseline for determining credit for emissions reductions.

¹¹ South Carolina’s SIP prohibits the issuance of any permit to construct or modify a source if emissions interfere with attainment or maintenance of any state or federal standard. See Regulation 61-62.1, Section II, Paragraph A.4.

In the April 24, 2020, SIP revisions, South Carolina adds new Sections (H) through (K) to the State's NNSR regulations. Sections (J) and (K) only contain a "[Reserved]" note, to leave space for future updates. Sections (H) and (I) include South Carolina's adoption of language related to interpollutant offsetting and banking of emission offsets, respectively. The language generally aligns with that of the Federal regulations at 40 CFR 51.165(a)(3) and (11), as well as Appendix S to Part 51, but does not constitute a valid banking and trading program because it is missing some of the key elements that are required to ensure that these offsets are traded and banked correctly and utilizing permanent, quantifiable, and enforceable reductions.

Additionally, Section (H), *Interpollutant offsetting*, contains vacated language from the December 6, 2018, rule "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements" (2018 Implementation Rule).¹² The Federal interpollutant offsetting provisions found at 40 CFR 51.165(a)(11), as well as Appendix S to Part 51 (at paragraph IV.G.5), were vacated by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) through a January 29, 2021, court decision. *See Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). Accordingly, on June 22, 2021, the EPA Administrator signed a final rule that, among other changes, removes the language allowing interprecursor trading for ozone and restoring the language in the NNSR regulations to the form it was in after the EPA's 2008 PM_{2.5} implementation rule.¹³ As a result, South Carolina withdrew its request that EPA incorporate Section (H) into the SIP through a withdrawal letter dated April 20, 2021.¹⁴

For the reasons discussed above, EPA is not proposing to incorporate Section (H) into the South Carolina SIP, and is proposing to incorporate only the addition of Section (I), *Banking of emissions offsets*, with the caveat that this does not create an offset banking and trading program in the State's SIP. In order for South Carolina to have an offsets banking and trading program in

¹² See 83 FR 62998.

¹³ The final rule is available at <https://www.epa.gov/nsr/final-error-corrections-rule>.

¹⁴ The April 20, 2021, withdrawal letter can be found in the docket for this proposed rulemaking.

the SIP, the State must adopt a full banking and trading rule that covers everything necessary for the program to operate correctly and EPA must incorporate that rule into the SIP.

Finally, under Section (M), *Public participation*, South Carolina adds e-notice provisions for its NNSR program. Originally found in paragraph (d)(7)(iv), the public notice requirements are renumbered to (M)(2)(d) and revised to incorporate EPA's amendments to the Federal public notice requirements discussed in Section II of this rulemaking. Specifically, South Carolina's April 24, 2020, SIP revisions for Standard No. 7.1 identify website publication on a public website identified by the Department as the consistent noticing method for draft permits subject to public notice under its NNSR program. South Carolina's e-notice provisions for NNSR note that other noticing methods, such as newspapers, may be used in addition (but not as a substitute) to website publication. South Carolina also includes a cross-reference to the new e-notice provisions of Section (M) under the State's PALs provisions for NNSR to maintain the consistent e-noticing method of public participation throughout its NNSR regulations. The updated language can be found under Section (N) of Standard No. 7.1, in paragraph (N)(5). EPA believes that the April 24, 2020, SIP revisions meet all the requirements of the revised Federal e-notice provisions in regards to the State's NNSR regulations, and EPA is proposing to incorporate these changes into South Carolina's SIP.

All other changes for Standard No. 7.1 included in the April 24, 2020, SIP revisions are administrative in nature.¹⁵ Except for the parts of subparagraphs (A)(10)(t) and (B)(22)(c)(xx) noted above, as they relate to the Ethanol Rule Provisions of the Federal NNSR regulations, and Section (H), as it relates to the Interpollutant Offsetting, all other changes to Standard No. 7.1 submitted through South Carolina's April 24, 2020 SIP revisions are being proposed for incorporation into the State's implementation plan.

IV. Incorporation by Reference

¹⁵ A description of each of these changes to Standard No. 7.1 begins on page 357/500 of the April 24, 2020, submittal PDF. The submittal can be found in the docket for this proposed rulemaking.

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference South Carolina’s Regulation 61-62.5, Standards No. 7 – *Prevention of Significant Deterioration*, and Standard No. 7.1 – *Nonattainment New Source Review*, both state effective on April 24, 2020, with the exception of paragraph (H), and a portion of paragraphs (A)(10)(t), and (B)(22)(c)(xx), from Regulation 61-62.5, Standard No. 7.1, as discussed above. EPA has made and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Proposed Action

As described above, EPA is proposing to approve, with some exceptions, the changes to the South Carolina Regulation 61-62.5, Standards No. 7 – *Prevention of Significant Deterioration*, and Standard No. 7.1 – *Nonattainment New Source Review*. These changes were submitted by South Carolina on April 24, 2020.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this SIP approval for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “all state and local

environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 15, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

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